SUPREME COURT, U. S.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1967

No. 396

CALIFORNIA CITIZENS BAND ASSOCIATION, INCORPORATED, a corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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California Citizens Band Association, Incorporated, a corporation, by its attorney, respectfully petitions that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on March 7, 1967 and made

final on April 21, 1967 by the denial of a petition for rehearing.

OPINION BELOW

The opinion of the Court of Appeals is to be found in the Appendix attached to this petition. (C.A. 9, 20030.) This is a final judgment of the United States Court of Appeals for the Ninth Circuit wherein, after argument and submission of the appeal on December 12, 1966, a decision was rendered on March 7, 1967 affirming certain rule making action on the part of respondent Federal Communications Commission. A petition for a rehearing filed by petitioner on April 6, 1967 was denied on April 21, 1967. The aforesaid opinion is printed as Appendix "A". The decision of the respondent Commission which promulgated the rules challenged herein by petitioner is printed as Appendix "B". The Judgment of the Court of Appeals is printed herein as Appendix "C".

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on March 7, 1967. A petition for a rehearing, filed by petitioner April 6, 1967, was denied on April 21, 1967. The jurisdiction of this Court is invoked under c. 646, Act of June 25, 1948, 62 Stat. 928, 28 *U.S.C.* Sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding that the infringement of the rights of the members of petitioner who are holders of Citizens Band Class D radio licenses, by respondent Commission (at least as to operating time) in restricting operating time and the use of frequencies contrary to the provisions of Sec. 303 (f) of the Communications Act of 1934, 48 Stat. 1082, 47 *U.S.C.* 303 (f), was not sufficiently "drastic" to be in violation of the due process clause of the Fifth Amendment of the *U.S. Constitution.*

2. Whether the Court of Appeals erred in holding that under the circumstances herein, respondent Commission was not required to afford petitioner a public hearing prior to the amendment of its rules, although petitioner had requested the same.

3. Whether the Court of Appeals erred in refusing to remand the controversy on the ground that the respondent Commission acted arbitrarily, capriciously and not in the public interest by promulgating rules based on evidence in its files which it did not make a part of the record in the proceedings.

4. Whether the Court of Appeals erred in denying the motion made by petitioner both prior to and at the hearing herein on December 12, 1966 for an order requiring respondent Commission to produce the additional evidence which had not been made a part of the record in the rule making proceedings.

5. Whether the Court of Appeals erred when it declined to review the substantiality of the evidence upon which the rule making was based.

6. Whether the Court of Appeals erred in holding that the new rules were not a Bill of Attainder in violation of Article I Sec. 9 of the *U.S. Constitution.*

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Article I Sec. 9 (3);
U.S. Constitution, Fifth Amendment;
47 *U.S.C.* Secs. 303(f) and (r);
47 *U.S.C.* Sec. 402 (a);
47 *U.S.C.* Secs. 316 (a) and (b);
5 *U.S.C.* Sec. 1033;
5 *U.S.C.* Sec. 1009;
5 *U.S.C.* Sec. 1034;
47 *U.S.C.* Sec. 501;
47 *U.S.C.* Sec. 502.

All of the above are printed in Appendix "D" hereof, except those cited verbatim in the argument.

STATEMENT OF THE CASE

Petitioner, California Citizens Band Association, Incorporated, is a tax-exempt, non-profit corporation, duly incorporated under the laws of the State of California, a citizen and resident of the State of California with its principal office in Alameda County, California. Each member of petitioner is an organized Citizens Band Radio Club, membership of which consists of radio station licensees, duly licensed by re-

spondent Federal Communications Commission to hold radio station licenses in the Class D Citizens Band. There are approximately nine clubs located in Northern California which are members of petitioner, and the members of the individual clubs are from all walks of life, including invalids and disabled persons.

The Citizens Radio Service is a relatively recent avenue of communication afforded citizens of the United States. No technical radio knowledge is necessary to obtain a license, and the only thing the applicant must do to qualify is to familiarize himself with the rules of the respondent Commission pertaining to the Citizens Radio Service. The Citizens Radio Service differs from the Amateur Service in that the amateur, in order to obtain his license, must pass a code reception and radio theory examination. The Citizens Radio Service is a low-powered, short range system of communication. There are four classifications of station licenses in the Citizens Radio Service of which Class D is one.

A Class D station is one operating on an authorized frequency of in the 26.96-27.23 MC/S frequency band, or on the frequency 27.255 MC/S with an authorized plate input power of 5 watts or less, for radiotelephony only. (There are 23 channels of communication on this band.) A Class D station is primarily licensed as a mobile station, but under certain conditions may operate at fixed locations. A Class D licensee is permitted to control and operate more than one unit. He thus may have a unit in his home, his automobile, his place of business or his boat, for ex-

ample. At the present time, there are approximately 1,000,000 Class D Stations licensed by respondent Commission to operate one or more units.

Citizens Radio Service equipment is readily available and its use is widespread and valuable. In times of emergency, the Service has saved lives and property and, in many instances, has been the sole means of communication in stricken areas. The use of Citizens Radio Service, or "CB" as it is known, has been of inestimable help to farmers and others in rural and remote areas in enabling them to communicate with their bases of operation. Civilian Defense groups have made great use of CB, as have many law enforcement agencies. Thousands of businesses have and still are employing CB in their commercial activities such as communication between company vehicles and headquarters. Millions of dollars have been spent by licensees for CB radio equipment.

Petitioner feels that it might be helpful to the Court for it to provide a brief summary of the history of the Citizens Radio Service. In 1944, in Docket No. 6651, respondent Commission recognized the fact that a complete review of the allocation of bands of frequencies was necessary. In February, 1945, respondent Commission announced that a hearing would be held and that one of the items to be considered was the Citizens Radio Service. This was the first time that the foregoing designation was used. In 1946, respondent Commission set up the Citizens Radio Service with Class A and Class B stations on the 460-470 MC/S frequency band. In 1947, frequency alloca-

tions were made, and the first rules governing the Service were adopted. In 1948, respondent Commission officially defined the Citizens Radio Service as follows:

> "A radio communication service of fixed, land or mobile stations, or combinations thereof, intended for use by citizens of the United States for private or personal radio communication (including radio signalling, control of objects by radio, and other purposes)."

The rules of respondent Commission pertaining to the Citizens Radio Service were first designated as Part 19. On September 11, 1958, the respondent Commission amended Part 19 to include the licensing of Class D stations. Licenses for all stations in the Citizens Radio Service were to be issued for a term of five years. As of March 12, 1959, Class D stations were free to operate on all 23 channels of the band. In 1960, respondent Commission promulgated a rule which required that in interstation communication between separate licensees, transmission would be limited to five consecutive minutes followed by a two minute silent period.

On November 22, 1962, respondent Commission initiated the proposed rule making which eventually culminated in the adoption of the rules which went into effect April 26, 1965 and which petitioner attacked by filing comments and objections with the respondent Commission. The proceedings in the respondent Commission were entitled "Docket 14843". Comments were invited and thousands of persons re-

sponded. No public hearings were held although the same were requested. Several stay orders were granted by respondent Commission, and subsequently, Part 19, which was redesignated as Part 95, went into effect as amended on April 26, 1965. Petitioner then timely filed its action number 20030 in the Court of Appeals to set aside the order of said respondent Commission. Two of the more serious changes made by respondent Commission were to restrict from 23 to 7 channels interstation communication by different licensees and to require licensees to observe a five minute silent period after five minutes of transmission with another licensee in interstation communication. The foregoing changes were affirmed by the Court of Appeals, although respondent Commission had made the same without a public hearing after request in the face of statutes (47 *U.S.C.* 303 and 47 *U.S.C.* 316) requiring the same. The Court of Appeals also affirmed the adoption of rules which were based on secret material in the possession of respondent Commission. The Court of Appeals also held that it was not required to determine the substantiality of the evidence upon which the rules were based. In this regard the Court stated that it was not in a position to rule on whether or not the respondent Commission had acted arbitrarily and capriciously in the selection of the 7 channels for interstation communication.

In respect to the jurisdiction of the Court of Appeals, 47 *U.S.C.* Sec. 303 provides that the Federal Communications Commission has the power in the public interest to make rules and regulations control-

ling radio station operation in the United States not inconsistent with law and to enforce the same. 47 *U.S.C.* 402 (a), 5 *U.S.C.* 1033 and 5 *U.S.C.* 1034 provide a procedure whereby any aggrieved party may file a petition in the Court of Appeals of his residence to annul or set aside the order of respondent Commission (See Appendix "D".)

REASONS FOR GRANTING THE WRIT

For the purposes of clarity, a short statement of reasons for granting the writ is here set forth. These are expanded in the argument following this resume.

1. The decision of the Court of Appeals is in conflict with the decisions of this Court as to whether infringement on admitted rights has to be "drastic" in order to invoke the due process clause of the Fifth Amendment of the *U.S. Constitution.*

2. The decision of the Court of Appeals is in conflict with the decision of this Court in *Interstate Commerce Comm. v. Louisville and Nashville RR.*, 227 U.S. 88, as to the sustaining of a rule which was based on evidence not in the record but considered by the Commission.

3. The decision of the Court of Appeals is in conflict with the decision of this Court in *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, in respect to the question of a full hearing.

4. The decision of the Court of Appeals is in conflict with the decision of this Court in *U.S. v. C.M.*

St.P. & P., 294 U.S. 499, in refusing to rule on the expertise of the respondent Commission in reducing the channels from 23 to 7 for interstation communication.

ARGUMENT

1. REQUIREMENT THAT ACTION BY THE RESPONDENT COMMISSION MUST BE DRASTIC BEFORE CONSTITUTIONAL PROTECTIONS ARE INVOKED.

47 *U.S.C.* 303 (f) reads as follows:

"*Powers and Duties of Commission*

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest or necessity requires, shall—

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter: Provided, however, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this chapter will be more fully complied with;"

47 *U.S.C.* 316 reads as follows:

"*Modification by Commission of station licenses or Construction permits; burden of proof.*

(a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term

thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: Provided, That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice.

(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission."

Clearly, from the foregoing statutes, a licensee has a right to a public hearing if changes are to be made in his times of operation and the frequencies he may use for communication. In the case at bar, the rule changes provided that in regard to the silent period required after each five minutes of communication with other Class D licensees, the time would be increased from two to five minutes. The respondent Commission ruled in its memorandum opinion and order (See Appendix "D") that such an increase in silent time did not invoke such a change in a basic license right as to require a hearing under 303 (f).

The Court of Appeals agreed with the Commission's position stating on page 14 of its decision herein:

> "The rule change in question, enlarging the silent period from two to five minutes in Class D inter-station communications, constitutes a relatively minor adjustment. In so concluding, we take note that the primary purpose of a clear Class D license is for intra-station communication. Minor changes in carrying on inter-station communication could not, therefore, be considered of sufficient consequence to entitle a Class D licensee to a public hearing under section 303 (f).
>
> However, this is not to imply that the Commission could make changes at will in Class D licenses without allowing a public hearing. A drastic change in the allowable operation of a Class D license could result in a judicial determination that a basic license right has been abused, entitling the licensee to a public hearing under section 303 (f)."

The Court thus considered the change a relatively minor adjustment. It is to be remembered that the Class D licensee is entitled to operate 24 hours a day 7 days a week. Calculation will show that if a licensee starts with five minutes of operation and then observes two minutes of silence, continuing the same procedure for a one hour period, he will be able to operate for forty-four minutes. Using the five on five off formula for the hour period, he will be able to operate in inter-station communication for only thirty minutes. The Court of Appeals states that the differential of fourteen minutes per hour is a

"relatively minor adjustment". Petitioner does not agree. A 23% cut in operating time is not minor.

A right given by statute is valuable to the holder thereof and should not be infringed upon without compliance with the procedures required by due process of law. Here, admittedly, is a change in operating time, but the Court states that it isn't of sufficient consequence to entitle the licensee to a public hearing. It is well to remember that there are approximately one million licensees who are being affected by the action of respondent Commission. The Court is thus holding in effect that federal admistrative agencies have the power to determine whether an infringement on a right is substantial enough to be protected by the due process clause of the *Fifth Amendment of the U.S. Constitution.* Such an interpretation would permit the agencies to whittle on and eventially erode the entire right without following any of the procedural safeguards.

In the history of the United States, "rights" have always been of the utmost importance, and our founding fathers took great care to see that the means for safeguarding those rights were instituted. Our Supreme Court since its inception has always been the bulwark protecting the people against encroachment on their rights.

In *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, which was a case involving the security risk list of the attorney general, Justice Douglas stated as follows in his concurring opinion on page 177:

> "When the government becomes the moving party and levels its great powers against the citizen, it should be held to the same standards of fair dealing as we prescribe for other legal contests. To let the government adopt such lesser ones as suits the convenience of its officers is to start down the totalitarian path."

A few years ago, four of the present members of the Supreme Court addressed the students at New York University in what were entitled the James Madison Lectures. Those who participated were Chief Justice Warren, Justices Black, Douglas and Brennan. Justice Brennan spoke on the Fourteenth Amendment while the subject matter of the others concerned the Bill of Rights. These speeches were reported in a book published in 1963 which was entitled "The Great Rights" and edited by Edmund Cahn. The subject of Justice Black's lecture was "The Bill of Rights and the Federal Government". Mr. Cahn in his book on page 62 quotes Justice Black as follows:

> "The provisions of the Bill of Rights that safeguard fair legal procedures came about largely to protect the weak and the oppressed from punishment by the strong and the powerful who wanted to stifle the voices of discontent raised in protest against oppression and injustice in public affairs. Nothing that I have read in the Congressional debates on the Bill of Rights indicates that there was any belief that the First Amendment contained any qualifications. The only arguments that tended to look in this discretion at all were those that said 'that all paper barriers

against the power of the community are too weak to be worthy of attention.' Suggestions were also made in and out of Congress that a Bill of Rights would be a futile gesture since there would be no way to enforce the safeguards for freedom it provided. Mr. Madison answered this argument in these words:

'If they (the Bill of Rights Amendments) are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an inpenetrable bulwark against any assumption of power in the Legislature or Executive; they will be naturally lead to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.'

I fail to see how courts can escape this sacred trust."

In the same book, page 110, Chief Justice Earl Warren speaking on "The Bill of Rights and the Military" is quoted as follows:

"One of the principal difficulties presented by these 'security risk' cases is the claim of necessity takes the form of an assertion of the right of secrecy. Thus the claim, by its very nature, tends to restrict the ability of the Court to evaluate its merit. This in turn impairs the efficacy of judicial review as an instrument for preserving the guarantees of the Bill of Rights. . . . I am one who believes firmly that the Court must be vigilant against neglect of the requirements of our Bill of Rights and the personal rights that document was intended to guarantee for all time."

Also, Justice William O. Douglas, in a lecture entitled "The Bill of Rights is Not Enough" is quoted as follows in the same book:

> Page 141: "Yet the judiciary is an indispensable part of the operation of our federal system. With the growing complexities of government it is often the one and only place where effective relief can be obtained. If the judiciary were to become a super-legislative group sitting in judgment on the affairs of the people, the situation would be intolerable. But where wrongs to individuals are done by violations of specific guarantees, it is abdication for courts to close their doors."
>
> Page 149: "If the Bill of Rights were being written today, it would also encompass some of the recurring evils arising out of the vast exercise of authority through the administrative agency. . . . Moreover, traditional ideas of Due Process are not enough to put into harness the modern administrative agency, let alone the modern prosecutor, or the modern legislative committee."

In respect to the reduction of the number of frequencies from 23 to 7 for inter-station communication, the Court held that the decision called for consideration of highly technical factors and that it was in no position to rule that the respondent Commission acted arbitrarily and capriciously in making that selection. Petitioner asserts that the Court of Appeals side-stepped an issue which it should have decided on the evidence. If there wasn't any evidence, then the matter should have been remanded to the respondent for further proceedings. In Justice Frankfurter's

dubitante in *RCA v. U.S.*, 341 U.S. 412, he states on page 426 as follows (the issue was the issue of compatibility of two color TV systems):

> "Finally we are told that the Commission's determination as to the likely prospect of early attainment of compatibility is a matter within its competence and not subject to court review. But prophecy of technological feasibility is hardly in the domain of expertness so long as scientific and technological barriers do not make the prospect fanciful. In any event, this Court is not without experience in understanding the nature of such complicated issues. We have had occasion before to consider complex scientific matters."

---

2. WAS PETITIONER ENTITLED TO A PUBLIC HEARING?

The answer is clearly yes. Approximately 1,000,000 licensees had their operating time in inter-station communication reduced by approximately 23% and their channels of communication reduced from 23 to 7. In addition, petitioner asked for a hearing which was denied. 47 *U.S.C.* 303 (f), supra and 47 *U.S.C.* 316, supra, clearly entitles petitioner the granting of that request. See *ICC v. L & N RR*, 227 U. S. 88.

3. DID THE RESPONDENT COMMISSION ACT ARBITRARILY, CAPRICIOUSLY AND NOT IN THE PUBLIC INTEREST BY PROMULGATING RULES BASED ON EVIDENCE IN ITS FILES WHICH IT DID NOT MAKE A PART OF THE RECORD IN THE PROCEEDINGS?

The answer is clearly yes and the Court of Appeals should have so held. In *Chicago Junction Case,* 264 U.S. 258, Justice Brandeis stated on page 263:

> "Facts conceivably known to the Commission but not put in evidence will not support an order." (ICC case.)

In *U.S. v. Abilene & So. Ry. Co.,* 265 U.S. 274, 287-289, the Court held that the ICC cannot use material from its files to make findings of fact unless the same had been brought into evidence. The Commission cannot take judicial notice of all the facts in the documents in its files. Commission must introduce, by specific reference, such parts of the reports as it wishes to treat as evidence.

In *ICC v. L & N RR,* 227 U.S. 88, the Court states on page 93:

> "The Commission is an administrative body and even where it acts in a quasi-judicial capacity, is not limited by the strict rules of evidence, which prevail in suits between parties. . . . But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days."

In *U.S., Cincinnati & Columbus Traction Co. et al. v. B & O Southwestern RR Co.,* 226 U.S. 14, an ICC case, Justice Holmes stated on page 20:

"We remark that it is stated in the Commission's report that they base their conclusion more largely upon their own investigation than upon the testimony of the witnesses. It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based on specific investigations made in the case without notice to them. (cases cited.) Such an investigation is quite different from a view by a jury taken with notice and subject to the order of a court, and different again from the question of the right of the Commission to take notice of results reached by it in other cases when its doing so is made to appear in the record, and the facts thus noticed are specified, so that matters of law are saved."

---

4. DID THE COURT OF APPEALS ERR IN DENYING PETITIONER'S MOTION FOR AN ORDER REQUIRING RESPONDENT COMMISSION TO PRODUCE THE ADDITIONAL EVIDENCE WHICH WAS NOT A PART OF THE RECORD?

The answer is clearly yes. Respondent Commission admittedly used evidence in promulgating the rules in question which it did not disclose to the public or the persons filing comments. No claim of national security had been made by the respondent Commission. Under the decisions cited in the discussion regarding issue Number 3, and particularly *ICC v. L & N RR,* 227 U.S. 88, supra, the Commission is not permitted to withhold the evidence.

5. FAILURE OF THE COURT OF APPEALS TO REVIEW THE SUBSTANTIALITY OF THE EVIDENCE.

The Court held on page 16 of its decision that it was not necessary for the respondent Commission to receive any evidence and that it followed therefore that the Court was not required to review the substantiality of the evidence.

Petitioner urges that the Court of Appeals should have determined whether the rule making was supported by substantial evidence. See *Universal Camera Corp. v. National Labor Relations Board,* 340 U.S. 474. Also *Boston & M. RR v. U.S.,* 373 U.S. 372, 202 Fed. Supp. 830; *RCA v. U.S.,* 341 U.S. 412. 5 *U.S.C.* 1009 provides in part as follows:

> (a) "Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof."
>
> (e) "So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. It shall . . . (B) hold unlawful and set aside agency action, findings and conclusions found to be . . . (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute."

6. BILL OF ATTAINDER.

Article I Section 9(3) of the *U.S. Constitution* provides that Congress shall pass no bill of attainder. Petitioner urges that the sanction and punishment provided in 47 *U.S.C.* 501 and 502 will be imposed on those unfortunate licensees by respondent Commission for acts judged by the said Commission to be violations of its rules. See generally:

U.S. v. Lovett, 328 U.S. 303;
Fleming v. Nestor, 363 U.S. 603;
Garner v. Board of Public Works of LA, 341 U.S. 716.

CONCLUSION

Petitioner urges that this Honorable Court grant its petition for a writ of certiorari on the basis of the foregoing.

Dated, Oakland, California,
July 10, 1967.

Respectfully submitted,
CLIFTON HILDEBRAND,
Attorney for Petitioner.

DONALD M. SEA,
Of Counsel.

(Appendices "A", "B", "C" and "D" Follow)

Appendix "A"

United States Court of Appeals
for the Ninth Circuit

California Citizens Band Association, Incorporated, a corporation, Petitioner, vs. United States of America and Federal Communications Commission, Respondents.	No. 20,030

[March 7, 1967]

On Petition for Review of Orders of the
Federal Communications Commission

Before: Madden, Judge of the Court of Claims,
Hamley and Ely, Circuit Judges

Hamley, Circuit Judge:

This is a proceeding to review two orders of the Federal Communications Commission (Commission) affecting Class D radio stations in the Citizens Radio Service. Petitioner, California Citizens Band Association, Incorporated, is a non-profit California corporation. All of its members are Citizens Band Radio Clubs. The membership of each such club consists of

radio station licensees, duly licensed by the Commission to hold station licenses in the Class D Citizens Radio Service.

In one of the orders under review, released July 29, 1964 (29 FR 11099), the Commission adopted certain amendments to part 19 (now part 95) of the Commission's rules. In the other order, released on March 1, 1965 (30 FR 2706), the Commission, on reconsideration, adhered to its earlier determination. Both orders deal with the promulgation of rules affecting the Citizens Radio Service. The rules in question pertain, for the most part, to the kind of messages that may be transmitted, the frequencies that may be used, and the length of silent intervals between transmissions.

The Citizens Radio Service originated in 1945 when the Commission, after extensive inquiries and hearings, allocated a portion of the radio spectrum for a new "Citizens Radio-communication Service." This new service was primarily designed for both personal and business use by private citizens, particularly where other means of communication were not available. It was intended for essential, local communications such as those entailed in the operation of department stores, farms and construction projects. The first rules governing this Service were promulgated in 1947. In these rules, limitations on usage were kept at a minimum in order to foster development of the service.

When these rules were codified in 1949, certain prohibitions were set forth on the types of communi-

cations allowed in the Citizens Radio Service. Among other things, the codified rules provided that such stations be used only to communicate with other stations in the Citizens Radio Service; that all communications be limited to the minimum practicable transmission time; and that no station be used to carry communications for hire or in connection with radio broadcasting. In 1958, the Commission revised the rules and, among other things, established within the Citizens Radio Service, a new Class D, which was authorized to operate on certain frequencies in the 27 megacycle band.[1]

The Class D category of stations was created to fulfill an increasing need for short-distance voice communication by radio for personal or business use.[2] An ever-increasing number of applicants applied for Class

---

[1]In the Commission rules, the term Class D Citizens Radio Station was defined as follows:

"A mobile station in the Citizens Radio Service operating on an authorized frequency in the 26.96-27.23 MC frequency band with an authorized plate input power of 5 watts, or less, for radiotelephony only. (Class D stations are authorized to operate as mobile stations only; however, they may be operated at fixed locations in accordance with other provisions of this part.)" 23 FR 6132 (In somewhat modified form this definition is now contained in 47 CFR § 95.3[b].)

In 1959, the Commission also allocated 27.255 MC to be used by Class D stations on a shared basis with stations in other services (24 FR 1791). With this additional allocation, Class D stations were able to operate on twenty-three channels in the band.

[2]There are three other categories of stations in the Citizens Radio Service, denominated Classes A, B and C (47 CFR § 95.3 [b]). Each of these categories of stations has different kinds of authorized operations on different frequencies (47 CFR § 95.6). Class D stations, the only category of stations here in question, presently constitute more than ninety percent of the total number of Citizens Radio Service stations. Licenses for Class D, as well as all other classes of stations in the Citizens Radio Service, were to be issued for a term of five years.

D licenses.[3] Within a year, approximately 15,000 Class D station licenses had been granted.

On July 22, 1959, the Commission began a proceeding to amend its rules dealing with permissible communications in the Citizens Radio Service.[4] The Commission proposed several rule changes which, among other things, would limit the operation of the Class D stations (24 FR 6059-6060). Comments were invited on these proposed rule changes.

These proposed rules, adopted in a policy statement issued February 17, 1960 (25 FR 1408), reflected the Commission's intention that Citizens' radio communication be used primarily for intercommunication between units of a single station (intra-station), rather than for communication with other stations (inter-station). They also gave effect to the Commission's

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[3]The Commission attributes this growth to the sporadic long distance transmission characteristics of the 27 MC band, which enables a licensee, for hobbying purposes, to make contacts with other stations at great distances from his home base. Also, equipment for operation of a Class D station in this range of frequencies is cheaper and simpler than equipment for the other classes of citizens stations. Moreover, eligibility standards for Class D stations are low. An applicant is required only to be a United States citizen, eighteen years of age or older. No examination is required, nor does the applicant need any technical knowledge. See 47 CFR §§ 95.7; 95.13.

[4]In this notice of proposed rule making, reported in 24 FR 6059, the Commission stated that a considerable number of individuals may have been planning the operation of facilities in this service for the sole purpose of making random contacts with distant or unknown stations or for engaging in lengthy general discussions in more or less the manner which is customary in the Amateur Radio Service. The Commission expressed the view that such amateur-type operation, if engaged in to any extent, could result in intolerable interference with the operation of radio facilities in this service for short distance communications by radio directed to specific persons or stations on personal or business matters.

desire that the Citizens Radio Service be restricted to useful and substantial messages related to the business or personal activities of the individuals concerned.

Communications to random or unknown stations were prohibited. For the first time a duration on the length of communications was prescribed. The exchange of communications between two or more Class D stations (inter-station) was limited to not more than five consecutive minutes, followed by a two-minute silent period. This limitation did not apply to intra-station communications or to emergency communications. These rule amendments were made effective March 15, 1960. See 25 FR 1408-1411.

In November, 1962, the Commission initiated the proposed rule making which eventuated in the entry of the Commission orders here under review. See 27 FR 11500. Proposed amendments to Part 19 (now Part 95) were publicized and interested persons were invited to file comments on or before January 15, 1963.[5] In the accompanying notice the Commission stated that there were then approximately 350,000 Class D stations and that misuse of the Class D operating privileges had become so prevalent as to threaten the continued usefulness of the service. The Commission also stated in this notice that the proposed rule amendments were designed to make more apparent the permissible and prohibited communications and uses of citizens radio stations.

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[5]The time for filing comments was later extended to March 4, 1963.